

### **REMARKS**

Claims 1-29 and 31-34 were examined in a subject Office action dated September 25, 2007 and stand under final rejection. In response thereto, Applicants filed a request for continued examination (RCE) on October 31, 2007 and herein amended claims 1, 2, 21, 23, 24, and 32-34, canceled claims 18 and 19, added claims 35-41, and left claims 3-17, 20, 22, and 25-29 pending under active prosecution as provided in pages 2-8. Applicants assert that the amendments are supported in the originally filed Specification and do not introduce new subject matter. Favorable reconsideration of the subject patent application is respectfully requested in view of the comments and amendments herein.

#### **I. Rejection of Claim 31 Under 35 U.S.C §101**

Claim 31 stands rejected under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter. Claim 31 has been canceled to obviate the rejection.

#### **II. Rejection of Claims 1-29 and 31-34 Under 35 U.S.C §103(a)**

Claims 1-29 and 31-34 stand rejected under 35 U.S.C. §103(a), as being unpatentable over Clark, *et al.* US Patent No. 6725228 issued April 20, 2004 and filed October 31, 2000, in view of Voticky, *et al.* (hereinafter Voticky) U.S. Patent No. 6351764 issued February 26, 2002. It is respectfully submitted that this rejection should be withdrawn for at least the following reasons. The combination of Clark and Voticky fails to teach all of the claim limitations.

Often, it will be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue. To facilitate review, this analysis should be made explicit. *See KSR v. Teleflex*, 550 U.S. \_\_\_, 127 S. Ct. 1727 (2007) *citing In re Kahn*, 441 F. 3d 977, 988 (CA Fed. 2006) (“**[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness**”).

A factfinder should be aware, of course, of the distortion caused by hindsight bias and must be cautious of arguments reliant upon *ex post* reasoning. *See KSR v. Teleflex*, 550 U.S. \_\_\_, 127 S. Ct. 1727 (2007) *citing Graham v. John*

Deere Co. of Kansas City, 383 U. S. 1, 36 (warning against a “temptation to read into the prior art the teachings of the invention in issue” and instructing courts to “guard against slipping into the use of hindsight” (*quoting Monroe Auto Equipment Co. v. Heckethorn Mfg. & Supply Co.*, 332 F. 2d 406, 412 (CA6 1964))).

Turning to independent claim 1, the claim has been amended to recite a system comprising a component that receives message content, *a real-time communication channel in which a user is selectively active with at least one other participant*, and an organization component that determines an *active* status of the message content *according to a currently active communication channel to the participant associated with the message content* and that dynamically partitions and graphically arranges the content in response to having an active status. Support for this amendment is provided in at least paragraph [0043]. Claim as amended recites features of dependent claims 18 and 19 that are subsequently canceled. The amendments further clarify that the claimed “user state” of original claim 18 pertains to a communication channel with a participant associated with the message content.

In rejecting the additional features of claim 18 and 19, the Examiner relied upon the teaching of Clark. However, Applicants assert that the attributes listed by the Examiner as taught by Clark fail to encompass a dynamically active communication channel with a participant that is associated with message content. Instead, each attribute of the message content described pertains to an inherent characteristic of the email, or a receiving user’s interaction with such email. Moreover, Clark, nor the other cited references, fail to appreciate enhancing such real-time communication with a participant by graphically arranging message content associated with this participant as an enhanced reference. Consequently, the cited reference fail to disclose each limitation of the claimed invention. Reconsideration and allowance of claim 1 is respectfully requested, as well as for claims 2-17, 20-22, and 35-39 that depend there from.

Independent claims 23, 32, and 33, which are directed toward similar features in method, computer program product, and means-plus-function apparatus formats, have each been amended in accordance with claim 1. For the same reasons, claims 23, 32, and 33 should be reconsidered and allowed, as well as for claims 24-29 and 40 that depend from claim 23 and claims 34 and 41 that depend from claim 33.

**CONCLUSION**

The present application is believed to be in condition for allowance in view of the above comments and amendments. A prompt action to such end is earnestly solicited.

In the event any fees are due in connection with this document, the Commissioner is authorized to charge those fees to Deposit Account No. 50-1063 [MSFTP554US].

Should the Examiner believe a telephone interview would be helpful to expedite favorable prosecution, the Examiner is invited to contact applicant's undersigned representative at the telephone number below.

Respectfully submitted,

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